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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 22 2010

SRC 07 800 26342

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions **holding an advanced degree. The petitioner seeks employment as a professor/researcher.** The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. Much of the new evidence postdates the filing of the petition. The petitioner, however, must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). In order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008). For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Molecular Biology from the University of Tennessee. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the

petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, wound care research, and that the proposed benefits of his work, improved treatment of wounds in the elderly, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The record establishes that the petitioner works as one of 36 investigators at eight National Institutes of Health (NIH) funded centers for wound healing research. Eligibility for the waiver, however, must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

On appeal, counsel asserts that the petitioner's advanced training in molecular biology makes him irreplaceable on the projects for which he now works. Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner received his Ph.D. from the University of Tennessee in 1996. The petitioner then worked as a research associate for the Veterans Administration Medical Center in Hampton, Virginia through 2000. The petitioner then joined Northwestern University where he was working as a research assistant professor as of the date of filing.

The petitioner received a 1999 postdoctoral research fellowship award from the American Liver Foundation in 1999 and a Certificate of Merit recognizing the high standard of his work entered in competition for the Pharmacia Biotech & Science Prize for Young Scientists in 1997. The petitioner does not appear to have won an actual award in the latter competition. Such recognition falls under one of the regulatory criteria for establishing eligibility as an alien of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(F), a classification that normally requires an approved alien employment certification. We cannot conclude that meeting one criterion, or even the requisite three criteria, for this classification warrants a waiver of the job offer in the national interest. *Id.* at 218, 222.

The record also contains an invitation to submit his biographical blurb for inclusion in *Who's Who Among American Teachers and Educators*. The petitioner did not submit evidence, however, that this publication constitutes more than a vanity press where individuals may self-nominate themselves for inclusion in this large annually published directory.

The record establishes that the petitioner was listed as key personnel and as a principal investigator on grant applications prior to the date of filing. The critique of the petitioner's principal investigator grant application generally approves of the petitioner's goals and methods, noting that he is an experienced researcher who will "significantly benefit from the collaboration with [redacted], a recognized expert in wound healing." While the petitioner's proposed research was clearly perceived as valuable, any research must be shown to be original and present some benefit if it is to receive funding. It does not follow that every researcher who is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

The petitioner submitted several letters supporting the petition. On appeal, counsel asserts that the director did not afford the letters sufficient consideration. We will consider the letters below, evaluating the content of these letters. Notably, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of "contributions" to the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

[redacted], a professor and research career scientist at the Department of Veterans Affairs Medical Center, Hampton, Virginia, explains that he was a "preceptor" for the petitioner during his graduate studies involving abnormal gene expression in alcoholic liver disease. [redacted] asserts that the petitioner identified a factor, referred to as Smad 7, that reduces abnormal scar formation associated with the progression of liver cirrhosis. [redacted] asserts that his laboratory continues to pursue this line of research and expresses hope that, through genetic engineering, "Smad 7 may eventually become a treatment of choice for liver fibrosis." The fact that [redacted] laboratory continues to pursue the research it was pursuing when the petitioner was a student there does not appear significant. The record reflects that the petitioner's article coauthored with [redacted] is the petitioner's best-cited article. The citations, however, would be more persuasive in conjunction with an explanation from the petitioner's references as to how this work has influenced the field.

[redacted], a professor at the University of Tennessee, asserts that he followed the petitioner through his Ph.D. research and concludes that the petitioner is "bright, active, accomplished, and a very nice and loyal person." While [redacted] supports approval of the

petition and briefly notes that the petitioner is pursuing research on scarring at Northwestern University, [redacted] provides no specifics about the petitioner's work at any institution or examples of how the petitioner has influenced the field.

[redacted] past president of the Wound Healing Society and a professor at Northwestern University, simply concludes that the petitioner has "established a career record which justifies projection of future benefits to our national interest." [redacted] then notes that the petitioner is involved in many important research projects, including collaborations with other wound research groups in the United States. [redacted] concludes that the petitioner's presence is necessary for the successful completion of these collaborative projects and would allow him to attend international research symposiums. [redacted] does not, however, provide any examples of other research institutions utilizing the petitioner's results.

_____ a professor at Northwestern University, provides general praise of the petitioner's work, noting his focus on dissecting the role of TGFβ in chronic wound healing in the aged. While [redacted] concludes that the petitioner's work is of "high quality," does not explain how the petitioner has already influenced the field.

[redacted] of Periodontics at the College of Dentistry, University of Illinois at Chicago, asserts that he knows the petitioner through his work at Northwestern University. notes that the petitioner's work on the hypoxia-inducible factor signal transduction pathway to measure oxygen levels and modulate growth factor pathways was published in an internationally circulated journal. We will not presume the influence of the petitioner's work from the journal in which it appeared. Rather, it is the petitioner's burden to demonstrate the influence of his individual articles. [redacted] further asserts that the petitioner's work has improved the medical community's understanding of altered stress response in chronic wounds, benefiting the "global research community." Once again, however, [redacted] provides no examples of clinical trials or other research at independent laboratories using the petitioner's work as a foundation.

[redacted] a professor at the University of Illinois at Chicago, states that the petitioner's research "on wound healing and modulation of scarring by gene therapy has led to several major publications over the years" and has resulted in conference presentations. [redacted] does not provide any specifics as to what the petitioner has accomplished or how it has impacted the field. Rather, he simply concludes that the petitioner's contributions "are of great medical significance when one considers the impact of his work on the healing of wounds, or the application of the techniques of gene therapy in such a process." This statement, however, appears to presume an impact without providing any examples of an impact.

Finally, asserts that the petitioner is one of the few individuals who can perform his experiments based on his unique background. It cannot suffice to state, however, that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are

available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

[redacted] of the University of Florida and a past President of the Wound Healing Society, notes that the petitioner is involved in a multi-institutional collaboration on wound research that includes the University of Florida. [redacted] does not reference a single accomplishment in this research, but concludes broadly that the petitioner is essential for the successful completion of these projects. While we do not question [redacted] sincerity, he provides no examples of the petitioner's past track record with some degree of influence in support of his general conviction that the petitioner is irreplaceable.

[redacted] a dentist at Loyola University, Chicago, calls the petitioner "a bright member of [the] wound healing research community," whose "work, if continued, promises to develop new therapeutic strategies which could lead to more cost effective wound care management." [redacted] then concludes that the petitioner's ability to serve the national interest is substantially greater than the majority of his colleagues. This conclusion does not follow from the stated premises unless one assumes that the work of most members of the "wound healing research community" holds no promise for "new therapeutic strategies" or "more cost effective wound care management." [redacted] brief letter states that the petitioner "has already significantly influenced the field by designing many novel techniques, tools and reagents," but she does not further elaborate by specifying these techniques or explaining how these techniques are known to have "influenced the field" (for instance, through implementation at institutions where the petitioner is not an active researcher or collaborator). [redacted] does not list any new therapeutic strategies arising from the petitioner's work that have already been widely implemented or even advanced beyond hypothetical expectations.

[redacted] retired Deputy Director and Head of Organic Chemistry II at the Indian Institute of Chemical Technology, asserts that the petitioner has "developed a number of ingenious protocols and methodologies, which allowed efficient pilot gene-therapy experimentation." [redacted] does not identify any of these protocols or methodologies, does not claim to be using these protocols or methodologies himself and does not identify any independent laboratory that is doing so. [redacted] affirms his belief that the beneficiary's "continuous research effort will lead to more cutting-edge, high quality reagents and services for biomedical research." concludes that the petitioner's research "holds excellent promise to accelerate the pace of diagnostic medicine and drug discovery in the field of wound healing."

[redacted], current Deputy Director and Head, Organic Chemistry II, Indian Institute of Chemical Technology, asserts that the petitioner has "continued to better define the cellular targets and molecular pathways involved in ischemic disease processes as the foundation for applying gene therapy as a molecular medicine in the case of wound healing." [redacted] further asserts that the petitioner was the key investigator in studies of the role of Smad proteins on collagen gene regulation in wound tissues stimulated by TGFβ. The results of this work, according to [redacted] showed

"how multiple trans-activation signals are integrated and/or converge to increase the rate of type 1 collagen transcript in wound tissues resulting in wound healing." [redacted] concludes that the petitioner's work "has significantly contributed for the generation of high quality gene therapy data in a short amount of time." [redacted] does not support this broad assertion with any examples of the use of the petitioner's results in the field.

The petitioner did submit evidence of ten articles published before the date of filing. The petitioner submitted a single citation in an unidentified source regarding Monoclonal Antibody to Fibulin 5. In response to the director's request for additional evidence, the petitioner submitted evidence of additional citations. It is unknown how many of these citations postdate the filing of the petition. The petitioner must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Regardless, while citations can serve as useful evidence to support explanations of the petitioner's influence, such explanations are absent from the record in this matter.

The record shows that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher producing useful results serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.